

## Closing Litigation Status Report

MCC RECORDS MANAGEMENT  
Co: 19 Box# 142160  
CTRL# 9185 Loc: 21-3-28

**Caption:** Exclusa v. White-Westinghouse

**Matter Number:**

**Date Printed:** 08/13/99

**Location:** Puerto Rico

**Type of Case:**

**Assigned to:**

**Date Complaint Filed:**

**Date of Loss:**

**Place:** San Juan

**Docket #:** 97-1250-JP

**Court:** US District Court

**Clas File #:**

**Amount of Suit:**

**Product:**

**Reserve Amount:**

**Model #:**

**Expense Reserve:**

**Serial #:**

**Total Expenses:**

**WCI Counsel:** Hector Cuebas Tanon  
Vicente & Cuebas  
PO Box 11609  
San Juan, PR 00910

**Plaintiff's Counsel:** Raul Davila Rivera  
63 Fortaleza St.  
Old San Juan, Puerto Rico 00901

### Facts / Result

Settlement Release for \$600,000.00 dated 12/12/97

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

RECEIVED & FILED

97 DEC 23 PM 2:49

CLERK'S OFFICE  
U.S. DISTRICT COURT  
SAN JUAN, P.R.

HILDA EXCLUSA and  
EVELYN RUIZ-EXCLUSA

Plaintiffs

v.

WHITE WESTINGHOUSE PUERTO RICO  
CORP., ALMACENES PITUSA, INC.

Defendants

CIVIL NO. 97-1250-JP

TORT AND PERSONAL  
INJURY

PLAINTIFFS DEMAND  
TRIAL BY JURY

ADDENDUM TO SETTLEMENT AGREEMENT

TO THE HONORABLE COURT:

NOW COMES Plaintiffs and Co-Defendants through their respective undersigned attorneys and to this Honorable Court respectfully states as follows:

1. The parties wish to clarify that the release contained in the Settlement Agreement and Release dated and filed with this Court on December 12, 1997 extends to and covers any and all parties who were as may have been responsible for the damages past, present and future which relate to the incident alleged in the complaint.

Civil No: 97-1250 (JP)  
Page -2 -

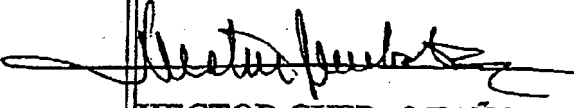
2. This specifically includes, but is not limited to, White Consolidated Industries, Inc. its subsidiaries and operating divisions, including White Westinghouse of Puerto Rico, Inc., its officers, employees, contractors and sub-contractors, as well as Pitusa, its officers, employees, contractors and sub-contractors.

IN WITNESS WHEREOF, THE PARTIES HERETO have caused this Addendum to Settlement Agreement to be made and executed.

Signed, sealed, and delivered by the parties, through their undersigned attorneys.

In San Juan, Puerto Rico, this <sup>23</sup> day of December, 1997.

**VICENTE & CUEBAS**  
Counsel for Defendants  
**HAROLD D. VICENTE, Esq.**  
**HECTOR CUEBAS TAÑON, Esq.**  
P. O. Box 11609  
San Juan, PR 00910-1609  
Phone: (787) 751-8000  
Fax: (787) 756-5250



**HECTOR CUEBAS TAÑON**  
USDC-P. R. 122002

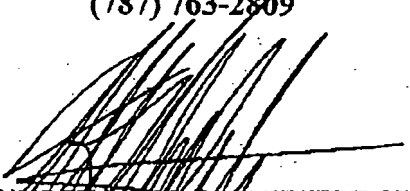
**BAUZA & DAVILA**  
As Counsel for Plaintiffs  
**RAUL DAVILA RIVERA, Esq.**  
63 Fortaleza Street  
Old San Juan, Puerto Rico  
00901  
Phone: (787) 725-5953  
(787) 725-0339  
Fax: (787) 723-0025



**RAUL DAVILA RIVERA**  
USDC- P. R. 113908

Civil No: 97-1250 (JP)  
Page -3 -

**MODESTO L. RODRIGUEZ SUAREZ**  
**Counsel for Almacenes Pitusa**  
**MARICHAL & HERNANDEZ**  
**Calle Bolivia #33, Suite #301**  
**Hato Rey, Puerto Rico 00917**  
**Phone: (787) 753-1565**  
**Fax: (787) 763-1704**  
**(787) 763-2809**



**MODESTO L. RODRIGUEZ SUAREZ**  
**USDC-P.R. 128312**

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ENTERED ON DOCKET  
12/24/97  
PURSUANT  
TO FRCP RULES 58 & 72

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

HILDA EXCLUSA,  
EVELYN RUIZ-EXCLUSA,

Plaintiffs,

v.

CIVIL NO. 97-1250 (JP)

WHITE WESTINGHOUSE P.R. CORP.,  
ALMACENES PITUSA, INC.,

Defendants

J U D G M E N T

RECEIVED & FILED  
1997 DEC 19 PM 3:53  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
SAN JUAN, P.R.

The parties herein have filed a "Settlement Agreement and Release" in this case (docket No. 75). Pursuant thereto, the Court:

1. ENTERS JUDGMENT for Plaintiff Mrs. Hilda Exclusa to have and recover from co-Defendant White Westinghouse of Puerto Rico, Inc., the sum of Six Hundred Thousand Dollars (\$600,000.00) for all damages suffered by Plaintiffs, past, present, and future, or which may become known in the future, alleged or not, and as described in said "Settlement Agreement and Release;"
2. ORDERS said payment to be made within thirty (30) days to Hilda Exclusa and her attorney Mr. Raúl Dávila;
3. DISMISSES the claim filed by Evelyn Ruiz-Exclusa with prejudice;

CIVIL NO. 97-1250 (JP)

2

4. ENTERS JUDGMENT without imposing costs and attorney's fees and ORDERS that each party SHALL bear its own costs and attorneys' fees; and

5. ORDERS that the agreements entered into by and between the parties hereto, as contained in the "Settlement Agreement and Release" filed herein pertaining to the release, discharge, non-admission of liability, and all other agreements and understanding are incorporated in this judgment and made to form part thereof.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

In San Juan, Puerto Rico, this 19<sup>th</sup> day of December, 1997.



JAIME PIERAS, JR.  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

HILDA EXCLUSA and  
EVELYN RUIZ-EXCLUSA

Plaintiffs

v.

WHITE WESTINGHOUSE PUERTO RICO  
CORP., ALMACENES PITUSA, INC.

Defendants

CIVIL NO. 97-1250-JP

TORT AND PERSONAL  
INJURY

PLAINTIFFS DEMAND  
TRIAL BY JURY

SETTLEMENT AGREEMENT AND RELEASE

TO THE HONORABLE COURT:

NOW COMES Plaintiffs and Co-Defendants through their respective undersigned attorneys and to this Honorable Court respectfully states as follows:

A. On February 24, 1997, Plaintiffs initiated this judicial proceeding before the United States District Court, for the District of Puerto Rico against, among other defendants, WHITE WESTINGHOUSE OF PUERTO RICO, INC. ("WESTINGHOUSE"), hereinafter referred to as "the Litigation".

B. Plaintiffs and Co-Defendants now mutually desire to amicably compromise, settle, and resolve all outstanding disputes and matters between and

Civil No: 97-1250 (JP)  
Page 2

among themselves in accordance with the terms hereof.

C. It is understood and agreed that this settlement is the compromise of disputed claims, and that the payment made is not to be construed in any way as an admission of liability on the part of any party.

NOW, THEREFORE, in consideration of the premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which Plaintiffs and Westinghouse hereby acknowledge, the parties covenant and agree as follows:

1. The foregoing recitals are acknowledged to be true and correct and are incorporated by reference herein. All claims and disputes that were or that could have been asserted in the Litigation, and all other claims, whether known or unknown, between Plaintiffs and all defendants in the case related to matters between the parties are intended to be and are hereby settled and released in accordance with this Settlement Agreement.

2. "WESTINGHOUSE" will pay within thirty (30) days from the signing of this document by all parties, the aggregate sum of **SIX HUNDRED THOUSAND <sup>400</sup> DOLLARS (\$600,000.00)**, in full and complete settlement of all their personal injury claims, including the pain and suffering, mental anguish and emotional distress suffered by Plaintiffs that were or that could have been raised in the



Civil No: 97-1250 (JP)

Page - 3 -

Litigation. This sum is to be paid to Mrs. Hilda Exclusa and her attorney Mr. Raúl Dávila.

3. Each of the parties shall bear their own costs and attorney's fees.

4. In consideration of the sum of <sup>THOUSAND</sup> SIX HUNDRED DOLLARS (\$600,000.00) and for other good and valuable consideration, Plaintiffs DO FULLY AND FOREVER DISCHARGE AND RELEASE "WESTINGHOUSE", and all other co-defendants, namely "ALMACENES PITUSA", and their respective predecessors, successors, affiliates, assigns, divisions, subsidiaries, directors, officers, partners, controlling persons, employees, agents, consultants, administrators, and receivers from any and all demands, liabilities, obligations, damages, causes of action or suits, whether known or unknown, which Plaintiffs have had, may have had, or hereinafter may acquire against each or any of them, as a result of the Litigation or any other related matter.

5. Co-defendant Evelyn Ruiz Exclusa requests the dismissal with prejudice of her claim, and reiterates in all its extention and force the release and discharge expressed in Paragraph Four (4) above.

6. This Settlement Agreement and Release embodies the entire agreement and understanding of the parties hereto, supersedes any prior agreements between the parties to the extent that they are inconsistent herewith,

DEC 18 '97 09:15

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PAGE.004

DEF 000796

Civil no. 97-1250 (JP)  
Page -4-

and may not be changed, altered, or modified except by an instrument in writing signed by the party against whom the enforcement of any such change, alteration, or modification is sought.

IN WITNESS WHEREOF, THE PARTIES HERETO have caused this Settlement Agreement and Release to be made and executed.

Signed, sealed, and delivered by the parties, through their undersigned attorneys.

In San Juan, Puerto Rico, this 2 day of December, 1997.

VICENTE & CUEBAS  
Counsel for Defendants  
HAROLD D. VICENTE, Esq.  
HECTOR CUEBAS TAÑON, Esq.  
P. O. Box 11609  
San Juan, PR 00910-1609  
Phone: (787) 751-8000  
Fax: (787) 756-5250

BAUZA & DAVILA  
As Counsel for Plaintiffs  
RAUL DAVILA RIVERA, Esq.  
63 Fortaleza Street  
Old San Juan, Puerto Rico  
00901  
Phone: (787) 725-5953  
(787) 725-0339  
Fax: (787) 723-0025

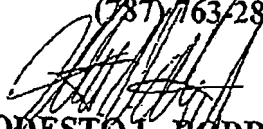
  
HECTOR CUEBAS TAÑON  
USDC-P. R. 122002

  
RAUL DAVILA RIVERA  
USDC- P. R. 113908

  
MODESTO L. RODRIGUEZ SUAREZ

Civil No: 97-1250 (JP)  
Page -5-

Counsel for Almacenes Pitusa  
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Hato Rey, Puerto Rico 00917  
Phone: (787) 753-1565  
Fax: (787) 763-1704  
(787) 763-2809

  
MODESTO L. RODRIGUEZ SUAREZ  
USDC-P. R. 128312

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PAG. 01

ESTADO LIBRE ASOCIADO DE PUERTO RICO  
TRIBUNAL DE PRIMERA INSTANCIA  
SALA SUPERIOR DE ARECIBO

ESTADOS UNIDOS DE AMERICA, }  
EL PRESIDENTE DE LOS ESTADOS UNIDOS } SS:  
ESTADO LIBRE ASOCIADO DE P.R. }

EXCLUSA, HILDA

DEMANDANTE  
VS.

CASO 95-0337  
SALON: 0402

WHITE WESTINGHOUSE OF PUERTO RICO, INC.  
DEMANDADO

DAÑOS Y PERJUICIOS  
CAUSAL O DELITO

LIC. CUEBAS TANON HECTOR  
ESTACION FERNANDEZ JUNCOS  
PO BOX 11609  
SAN JUAN PR

00910-1609

NOTIFICACION DE SENTENCIA

EL SECRETARIO QUE SUSCRIBE NOTIFICA A USTED QUE ESTE TRIBUNAL HA DICTADO SENTENCIA EN EL CASO DE EPIGRAFE CON FECHA 21 DE ENERO DE 1998, QUE HA SIDO DEBIDAMENTE REGISTRADA Y ARCHIVADA EN LOS AUTOS DE ESTE CASO, DONDE PODRA USTED ENTERARSE DETALLADAMENTE DE LOS TERMINOS DE LA MISMA.

Y, SIENDO O REPRESENTANDO USTED LA PARTE PERJUDICADA POR LA SENTENCIA, DE LA CUAL PUEDE ESTABLECERSE RECURSO DE APELACION, DIRIJO A USTED ESTA NOTIFICACION, HABIENDO ARCHIVADO EN LOS AUTOS DE ESTE CASO COPIA DE ELLA CON FECHA DE 04 DE FEBRERO DE 1998.

DAVILA RIVERA RAUL  
63 CALLE FORTALEZA

SAN JUAN PR  
00901

MARRERO GARCIA HILDA M  
PO BOX 195234

SAN JUAN  
00919-5234

ARECIBO, PUERTO RICO, A 04 DE FEBRERO DE 1998

MARIA DEL CARMEN CRUZ COLON

SECRETARIO

POR: ROSA H. AGUILAR BAEZ

SECRETARIO AUXILIAR

O.A.T.704-NOTIFICACION DE SENTENCIA

**ESTADO LIBRE ASOCIADO DE PUERTO RICO  
TRIBUNAL DE PRIMERA INSTANCIA  
SALA SUPERIOR DE ARECIBO**

**EXCLUSA, HILDA**

Demandante

CIVIL NUM.: C DP95-0337  
SALON DE SESIONES 402

VS.

SOBRE:

**WHITE WESTINGHOUSE OF PR, INC.**  
Demandado


DAÑOS Y PERJUICIOS

**SENTENCIA**

Se tiene a la parte demandante por desistida y apartada de esta acción de esta acción, con perjuicio .

**REGISTRESE Y NOTIFIQUESE.**

En Arecibo, Puerto Rico a 21 de enero de 1998.

  
**EDNA ABRUNA RODRIGUEZ**  
JUEZ SUPERIOR

**CERTIFICO:  
MARIA DEL CARMEN CRUZ COLON  
SECRETARIA GENERAL**

  
**POR: ROSA H. AGUILAR**  
SECRETARIA AUXILIAR III

98/01MM

DEF 000800

CLOSING LITIGATION STATUS REPORT

CAPTION: LEWIS, PAMELA  
V LAUNDRY & MONTGOMERY WARDS  
NUMBER: RM0627

04086/0

LOCATION CODE: LAUNDRY/WEBSTER CITY, IA      DATE: 10/05/99  
TYPE OF CASE: PL-PI      ASSIGNED TO: HEB  
DATE COMPLAINT FILED: 10/27/98      DATE OF LOSS: 10/23/96  
PLACE: SHAWNEE, KS      DOCKET #: 98CV1408  
COURT: DISTRICT      CLAS FILE #: EQUINOX      10000.81700  
AMOUNT OF SUIT:      \$0      PRODUCT: WASHER  
RESERVE AMOUNT:      MODEL #: 46-2351-00  
EXPENSE RESERVE:      **Redacted**      SERIAL #: 01  
TOTAL EXPENSES:      **Redacted**

WCI COUNSEL : DONALD W. VASOS  
DONALD W. VASO  
4400 SHAWNEE MISSION  
PARKWAY, SUITE 100  
SHAWNEE MISSION, KS 66205

TELEPHONE: (000) 000-0000

PLAINTIFF'S COUNSEL: GENE SCHROER - P.O. BOX 2667, TOKEPA, KS

FACTS\RESULT

WOMAN OPENED WASHER DURING SPIN CYCLE AND GOT ARM CAUGHT. ALLEGES FAILURE OF  
THE LOCKING MECHANISM.  
SETTLED, 6/28/99, \$5,500.00.

MCC RECORDS MANAGEMENT  
Co: 19 Box# 14267  
CTRL# 96185 Loc: 30-7-1

CC:

DEF 000811

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

PAMELA L. LEWIS,

Plaintiff,

vs.

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

Case No. 98 CV1408

**RELEASE**

FOR THE SOLE CONSIDERATION of FIVE THOUSAND FIVE HUNDRED DOLLARS and no/100 (\$5,500.00), receipt of which is hereby acknowledged, paid in full satisfaction and settlement by White Consolidated Industries, Inc., the undersigned does hereby RELEASE AND FOREVER DISCHARGE WHITE CONSOLIDATED INDUSTRIES, INC., and MONTGOMERY WARD, and their agents, employees, heirs, assigns, trustees, and all other persons, firms, or corporations who may be liable, or who are claimed to be liable, (hereinafter RELEASEES) from all claims, demands, damages, liability, actions or causes of action on account of personal injury occurring on or about October 23, 1996, at 734 Twiss Street, Topeka, Shawnee County, Kansas.

IT IS UNDERSTOOD AND AGREED that payment of the above amount of money is not an admission of liability, fault or breach; that this release is made as a compromise to avoid expense and to terminate all controversy and claims for loss, damage, and injury, of any kind that are known or unknown, including future development or aggravation thereof, and in any way growing out of or resulting from the above mentioned incident.

The undersigned realizes and fully understands that the RELEASEES have agreed to pay this aforesaid sum solely in reliance upon (1) my express assurances and express representations that I intend this settlement to be a full and final disposition of any and all claims that the undersigned may have against the RELEASEES, (2) my express representation that I do not contemplate or intend to make any claims or take any further action against the RELEASEES, at any time in the future, and (3) my express understanding that the consideration received herein is all the money or consideration the undersigned will ever receive from the RELEASEES in any action, as a result of the aforementioned occurrence.

The undersigned realizes and fully understands that this release will prevent the undersigned from making any further claims of any kind against WHITE CONSOLIDATED INDUSTRIES, INC., and MONTGOMERY WARD for personal injury, property damage, loss of services, medical expenses or claims of any type arising from the occurrence described above.

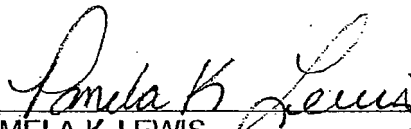
The undersigned further agrees to indemnify and hold the RELEASEES harmless from any and all claims, counts, causes of action and demands that may be made against the RELEASEES by the undersigned, arising out of the events and circumstances alleged in the Petition filed in this action.

IT IS FURTHER UNDERSTOOD AND AGREED that the petition and all claim for relief asserted by the undersigned in the lawsuit pending in the District Court of Shawnee County, Kansas, styled Pamela L. Lewis, Plaintiff v. White Consolidated Industries, Inc., and Montgomery Ward, Defendants, No. 98-CV-1408, SHALL BE DISMISSED WITH PREJUDICE.



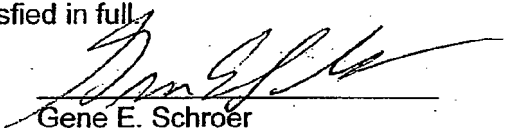
THIS IS A FULL RELEASE OF ALL CLAIMS.

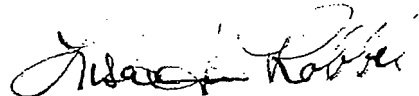
WITNESS MY HAND AND SEAL THIS 12 day of June, 1999.

  
PAMELA K. LEWIS

Attorneys fees waived or  
satisfied in full

BY:

  
Gene E. Schroer  
Schroer, Rice, P.A.  
115 S.E. Seventh Street  
P.O. Box 2667  
Topeka, KS 66601-2667





IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

PAMELA L. LEWIS,

Plaintiff,

vs.

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

Case No. 98 CV1408

STIPULATION FOR DISMISSAL WITH PREJUDICE

Comes now plaintiff Pamela L. Lewis, and defendants White Consolidated Industries, Inc., and Montgomery Ward, by and through their duly authorized attorneys, and state that plaintiff's claims have been settled and should be dismissed with prejudice, with plaintiff and defendant White to bear their respective costs.

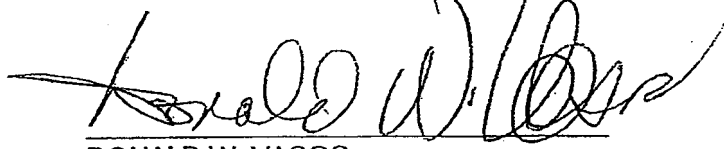
SCHROER, RICE, P.A.



GENE E. SCHROER  
115 S.E. Seventh Street  
Topeka, KS 66601-2667

ATTORNEY FOR PLAINTIFF

VASOS LAW OFFICES



DONALD W. VASOS  
4400 Shawnee Mission Pkwy, Suite 100  
Shawnee Mission, KS 66205-2518

ATTORNEYS FOR DEFENDANTS

FILED BY CLERK  
KS DISTRICT COURT  
360 JUDICIAL DISTRICT  
JUN 25 4 12 PM '99  
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

FILED BY CLERK  
KS. DISTRICT COURT  
3RD JUDICIAL DISTRICT

PAMELA L. LEWIS,

Plaintiff,

vs.

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

JUN 25 3 56 PM '99

TOPEKA, KANSAS

Case No. 98 CV1408

**ORDER OF DISMISSAL WITH PREJUDICE**

Pursuant to the Stipulation of Dismissal filed by the parties, all issues being fully compromised and settled,

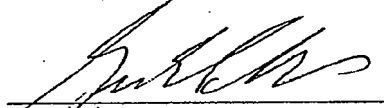
IT IS ORDERED that all claims against defendants are DISMISSED WITH PREJUDICE, with plaintiff and defendant White Consolidated Industries, Inc., to bear their respective costs.

\_\_\_\_\_  
DATE

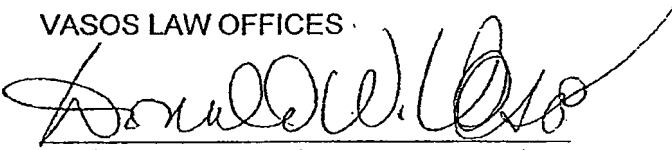
\_\_\_\_\_  
JUDGE OF THE CIRCUIT COURT

Approved by:

SCHROER, RICE, P.A.

  
\_\_\_\_\_  
GENE E. SCHROER  
115 S.E. Seventh Street  
Topeka, KS 66601-2667  
ATTORNEY FOR PLAINTIFF

VASOS LAW OFFICES

  
\_\_\_\_\_  
DONALD W. VASOS  
4400 Shawnee Mission Pkwy, Suite 100  
Shawnee Mission, KS 66205-2518  
ATTORNEYS FOR DEFENDANTS

SUPPLIER NO.		<b>WCI</b> SHARED SERVICES 11770 BEREA ROAD CLEVELAND, OH 44111		PAYEE NO.	CHECK NO.
TUWE5083				10196360	00015310
SUPPLIER NAME				DATE	PAGE
PAMELA LEWIS AND SCHROER, RICE, P.A.				06/29/99	1 of 1
INV. NO.	DATE	COMPANY	GROSS	DISCOUNT	NET
98CV1408 RM0627	062999	White Consolidated Ind., Inc	5,500.00		5,500.00
RETURN CHECK TO LEGAL DEPT SETTLEMENT: LEWIS, PAMELA & LAUNDRY & MONTGOMERY WARDS \$5,500.00					
			5,500.00		5,500.00

To Remove Document Fold and Tear Along This Perforation

THIS MULTITONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

**WCI** SHARED SERVICES

City of Bank N.A.  
Pittsburgh, PA 15253

00015310 06/29/99

PAY TO THE ORDER OF **PAMELA LEWIS AND SCHROER, RICE, P.A.**

**FIVE THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS \*\*\*\*\***

Working Fund  
VOID AFTER 90 DAYS

*Handwritten Signature*  
AUTHORIZED SIGNATURES

⑈0000015310⑈ ⑆043301601⑆ 000⑈2866⑈

C - 4/30/99

**VASOS LAW OFFICES**

*Attorneys:*  
DAVID A. HOFFMAN  
DONALD W. VASOS\*  
\*Kansas and Missouri

*Investigators:*  
RICHARD B. HINZE  
GARY A. SCHOLTZ, C.L.I.

Suite 100  
4400 Shawnee Mission Parkway  
Shawnee Mission, Kansas 66205-2518  
(913) 362-4400  
FAX (913) 362-4244  
Email: vasoslaw.com

*Wyandotte County Office:*  
One Security Plaza  
707 Minnesota Avenue  
Suite M-3  
Kansas City, Kansas 66101

June 21, 1999

Gene E. Schroer  
Schroer, Rice, P.A.  
115 S.E. Seventh Street  
P.O. Box 2667  
Topeka, KS 66601

REC'D JUN 24 1999

**RE: Pamela Lewis v. Frigidaire and Montgomery Ward**  
**Our File No. 98-392**

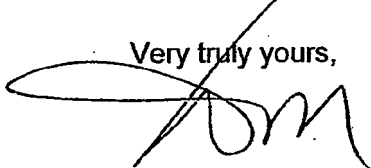
Dear Mr. Schroer:

This is to confirm our recent telephone conversation wherein above-captioned matter was settled for \$5,500.00.

I am enclosing herewith a copy of the *Release* for your client's signature, and the *Stipulation and Order of Dismissal*. Please advise whether there is any lien that will have to be recognized in this case, including S.R.S. and any subrogation lien by a self-funded health care plan governed by ERISA.

It is further my understanding that Pam Lewis was not married at the time of the incident. Please advise how the check should be made out.

Very truly yours,



DONALD W. VASOS

DWW:clw  
Enclosure  
c: Ed Buckles

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

PAMELA L. LEWIS,

Plaintiff,

vs.

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

Case No. 98 CV1408

RELEASE

FOR THE SOLE CONSIDERATION of FIVE THOUSAND FIVE HUNDRED DOLLARS and no/100 (\$5,500.00), receipt of which is hereby acknowledged, paid in full satisfaction and settlement by White Consolidated Industries, Inc., the undersigned does hereby RELEASE AND FOREVER DISCHARGE WHITE CONSOLIDATED INDUSTRIES, INC., and MONTGOMERY WARD, and their agents, employees, heirs, assigns, trustees, and all other persons, firms, or corporations who may be liable, or who are claimed to be liable, (hereinafter RELEASEES) from all claims, demands, damages, liability, actions or causes of action on account of personal injury occurring on or about October 23, 1996, at 734 Twiss Street, Topeka, Shawnee County, Kansas.

IT IS UNDERSTOOD AND AGREED that payment of the above amount of money is not an admission of liability, fault or breach; that this release is made as a compromise to avoid expense and to terminate all controversy and claims for loss, damage, and injury, of any kind that are known or unknown, including future development or aggravation thereof, and in any way growing out of or resulting from the above mentioned incident.

The undersigned realizes and fully understands that the RELEASEES have agreed to pay this aforesaid sum solely in reliance upon (1) my express assurances and express representations that I intend this settlement to be a full and final disposition of any and all claims that the undersigned may have against the RELEASEES, (2) my express representation that I do not contemplate or intend to make any claims or take any further action against the RELEASEES, at any time in the future, and (3) my express understanding that the consideration received herein is all the money or consideration the undersigned will ever receive from the RELEASEES in any action, as a result of the aforementioned occurrence.

The undersigned realizes and fully understands that this release will prevent the undersigned from making any further claims of any kind against WHITE CONSOLIDATED INDUSTRIES, INC., and MONTGOMERY WARD for personal injury, property damage, loss of services, medical expenses or claims of any type arising from the occurrence described above.

The undersigned further agrees to indemnify and hold the RELEASEES harmless from any and all claims, counts, causes of action and demands that may be made against the RELEASEES by the undersigned, arising out of the events and circumstances alleged in the Petition filed in this action.

IT IS FURTHER UNDERSTOOD AND AGREED that the petition and all claim for relief asserted by the undersigned in the lawsuit pending in the District Court of Shawnee County, Kansas, styled Pamela L. Lewis, Plaintiff v. White Consolidated Industries, Inc., and Montgomery Ward, Defendants, No. 98-CV-1408, SHALL BE DISMISSED WITH PREJUDICE.

THIS IS A FULL RELEASE OF ALL CLAIMS.

WITNESS MY HAND AND SEAL THIS \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
PAMELA L. LEWIS

Attorneys fees waived or  
satisfied in full.

BY: \_\_\_\_\_

Gene E. Schroer  
Schroer, Rice, P.A.  
115 S.E. Seventh Street  
P.O. Box 2667  
Topeka, KS 66601-2667



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

PAMELA L. LEWIS,

Plaintiff,

vs.

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

Case No. 98 CV1408

**STIPULATION FOR DISMISSAL WITH PREJUDICE**

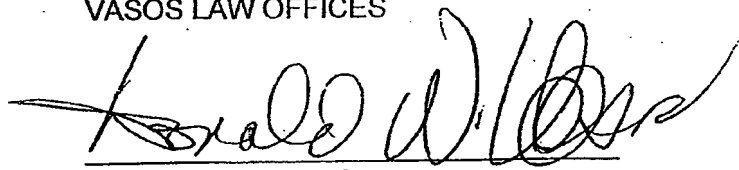
Comes now plaintiff Pamela L. Lewis, and defendants White Consolidated Industries, Inc., and Montgomery Ward, by and through their duly authorized attorneys, and state that plaintiff's claims have been settled and should be dismissed with prejudice, with plaintiff and defendant White to bear their respective costs.

SCHROER, RICE, P.A.

\_\_\_\_\_  
GENE E. SCHROER  
115 S.E. Seventh Street  
Topeka, KS 66601-2667

ATTORNEY FOR PLAINTIFF

VASOS LAW OFFICES

  
\_\_\_\_\_  
DONALD W. VASOS  
4400 Shawnee Mission Pkwy, Suite 100  
Shawnee Mission, KS 66205-2518

ATTORNEYS FOR DEFENDANTS



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 4

PAMELA L. LEWIS,

Plaintiff,

vs.

Case No. 98 CV1408

WHITE CONSOLIDATED INDUSTRIES,  
INC., and MONTGOMERY WARD,

Defendants.

**ORDER OF DISMISSAL WITH PREJUDICE**

Pursuant to the Stipulation of Dismissal filed by the parties, all issues being fully compromised and settled,

IT IS ORDERED that all claims against defendants are DISMISSED WITH PREJUDICE, with plaintiff and defendant White Consolidated Industries, Inc., to bear their respective costs.

\_\_\_\_\_  
DATE

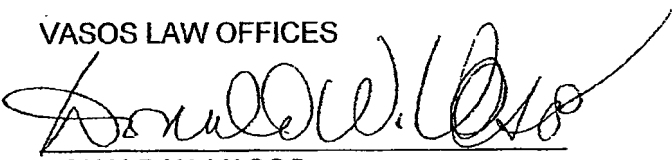
\_\_\_\_\_  
JUDGE OF THE CIRCUIT COURT

Approved by:

SCHROER, RICE, P.A.

VASOS LAW OFFICES

\_\_\_\_\_  
GENE E. SCHROER  
115 S.E. Seventh Street  
Topeka, KS 66601-2667  
ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
DONALD W. VASOS  
4400 Shawnee Mission Pkwy, Suite 100  
Shawnee Mission, KS 66205-2518  
ATTORNEYS FOR DEFENDANTS

RECORDED STATEMENTS

white Carol Delaney 96-1023 Lewis  
INSURED POL. NO. ACC. DATE  
STMT. Pamela H. Lewis 10-23-96  
NAME REL. TO ACC.  
DATE TAKEN 02-10-97

RECAP

STMT.

NAME

REL. TO ACC.

DATE TAKEN

RECAP

OS100A

Redacted

DISTRICT COURT OF SHAWNEE COUNTY KANSAS  
200 East 7th  
Topeka, Kansas 66603

Chambers of  
Eric S. Rosen  
District Judge  
Division 04

Case Number: 98CV001408

May 21, 1999

PAMELA L. LEWIS

Plaintiff

RECD JUN 01 1999

VS.

WHITE CONSOLIDATED INDUSTRIES INC., et. al.

Defendant

The above-captioned case has been set for Status Conference on  
June 24, 1999 AT 03:00P.M., IN DIVISION 04, ROOM 303.  
If you have any questions concerning this notice, please write or  
call (785) 233-8200 Ext. 4303.

Status conference will be conducted by phone. Court will initiate the  
call.

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing NOTICE  
was mailed this Friday, May 21, 1999, by United States mail,  
postage prepaid thereon, to the following:

VALERIE L. SMITH

Administrative Assistant

ATTORNEYS

GENE E. SCHROER

DONALD W. VASOS

MONTGOMERY WARD

(785) 357-0333

(785) 362-4400

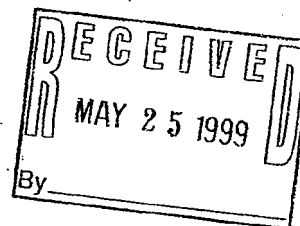
( )

TO Ed Backler

FROM Tom L. Vasos

INSURED \_\_\_\_\_

CLAIM NO. \_\_\_\_\_



DISTRICT COURT OF SHAWNEE COUNTY KANSAS  
200 East 7th  
Topeka, Kansas 66603

Chambers of  
Eric S. Rosen  
District Judge  
Division 04

Case Number: 98CV001408

April 22, 1999

PAMELA L LEWIS

Plaintiff

VS.

WHITE CONSOLIDATED INDUSTRIES INC, et. al.

Defendant

The above-captioned case has been set for Status Conference on  
May 21, 1999 AT 10:00A.M., IN DIVISION 04, ROOM 303.  
If you have any questions concerning this notice, please write or  
call (785) 233-8200 Ext. 4303.

Status conference will be conducted by phone. Court will initiate the  
call.

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing NOTICE  
was mailed this Thursday, April 22, 1999, by United States mail,  
postage prepaid thereon, to the following:

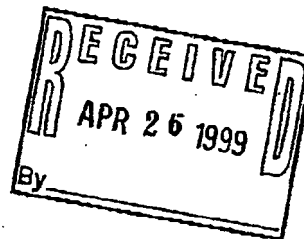
VALERIE L SMITH

Administrative Assistant

ATTORNEYS -

GENE E. SCHROER.  
DONALD W. VASOS  
MONTGOMERY WARD

(785) 357-0333  
(785) 362-4400  
( ) -



APR 26 '99 17:07

912 352 4244 PAGE 002

DEF 000827

CLOSING LITIGATION STATUS REPORT

MCC RECORDS MANAGEMENT  
Co: 19  
Box# 8910  
CTRL# 96185 Loc: 24-2-10

CAPTION: VAUGHN, TOMMY JEAN  
V MONTGOMERY WARD & CO.  
NUMBER: RM0571

05356/0

LOCATION CODE: LAUNDRY/WEBSTER CITY, IA DATE: 10/05/99

TYPE OF CASE: PL-PI

ASSIGNED TO: HEB

DATE COMPLAINT FILED: 0/00/00

DATE OF LOSS: 7/26/97

PLACE: LOS ANGELES, CA

DOCKET #: KC027484

COURT: SUPERIOR

CLAS FILE #: EQUINOX

10000.81700

AMOUNT OF SUIT: \$0

PRODUCT: WASHER

RESERVE AMOUNT:

MODEL #:

EXPENSE RESERVE:

Redacted

SERIAL #:

TOTAL EXPENSES:

Redacted

WCI COUNSEL : PRINDLE, DECKER & AMARO (LONG BEACH)

MICHAEL L. AMARO

310 GOLDEN SHORE

4TH FLOOR

LONG BEACH, CA 90802-4246

TELEPHONE: (562) 436-3946

PLAINTIFF'S COUNSEL:

FACTS\RESULT

PLAINTIFF SUFFERED A WRIST FRACTURE AFTER REACHING INTO A SPINNING WASHER.  
SETTLED, \$20,000.00, 6/10/99.

CC:

DEF 000801

**FULL RELEASE OF ALL CLAIMS**

FOR AND IN CONSIDERATION of the sum of **TWENTY FOUR THOUSAND DOLLARS AND NO/100 (\$24,000.00)** to me in hand paid, receipt whereof is hereby acknowledged, I do for myself, my heirs, executors, administrators and assigns, fully and forever release and discharge **WHITE CONSOLIDATED INDUSTRIES, INC. and MONTGOMERY WARD**, and its officers, directors and shareholders, and all other persons, firms, associations and corporations, and each of them, of and from any and all claims, demands, actions or causes of actions which I may or might have against them, or any of them, by reason of any damages or injuries whatsoever sustained by me and occasioned directly or indirectly by an accident occurring on or about the **26TH day of JULY, 1997, at or near 1621 Howellhurst, West Covina, California 91790.**

This is intended as a full and complete release of all or any claims that I may or might have by reason of the happening of the said accident, and in accepting said sum I do so in full settlement of any and all such claims, and intend to and do hereby release all of said persons, firms, associations and corporations of and from any and all liability of any nature whatsoever for all damage or injury to my person and property (specifically including all expenses to which I may have been put, and also including all consequential damage to me on account of injuries to others), as well for all consequences, effects and results of any such injury or damage, whether the same are now known or unknown to me, expected or unexpected by me, or have already appeared or developed or may now be latent or may in the future appear to develop, and all rights under Section 1542 of the Civil Code are hereby expressly waived.\*

It is understood that this settlement is not an admission of any liability but is in compromise of a disputed claim and for said consideration I hereby assume the risk of any damages, injuries, or disability which may now be latent or unexpected or which may hereafter appear, develop or occur as the result of said accident, and I will hold said persons, firms, associations and corporations harmless from any and all claims therefor.

In the event there is any action to recover damages pending, I direct that the same be dismissed forthwith.

I agree that this settlement and release shall not destroy or otherwise affect the rights of persons on whose behalf this payment is made, nor shall the dismissal of any action filed by me constitute a retraxit or estop persons who may claim to be damaged by reason of the accident, to pursue any legal remedies they may have against the undersigned or any other persons.

**I HEREBY CERTIFY THAT I HAVE READ ALL OF THIS RELEASE AND CODE SECTION AND FULLY UNDERSTAND ALL OF THE SAME, AND IN WITNESS**

**WHEREOF I HAVE EXECUTED THIS RELEASE THIS 12 DAY OF MAY, 1999, AT West Covina, CALIFORNIA.**

  
TOMMIE JEAN VAUGHN

**\*CIVIL CODE 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

MLA/VAUGHN/RELEASE

DEF 000802



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Michael L. Amaro, Esq. - Bar No. 109514 Prindle, Decker & Amaro 310 Golden Shore, Fourth Floor Long Beach, CA 90802-4246		TELEPHONE NO.: (562) 436-3946	FOR COURT USE ONLY  <b>ORIGINAL FILED</b>  <b>JUN 24 1999</b>  <b>LOS ANGELES SUPERIOR COURT</b>
ATTORNEY FOR (Name): <b>Defendant, MONTGOMERY WARD</b> Insert name of court and name of judicial district and branch court, if any: <b>LOS ANGELES SUPERIOR COURT</b> <b>EAST DISTRICT</b>			
PLAINTIFF/PETITIONER: <b>TOMMIE JEAN VAUGHN vs. MONTGOM</b>  DEFENDANT/RESPONDENT: <b>MONTGOMERY WARD &amp; CO., INC., e</b>			
<b>REQUEST FOR DISMISSAL</b> <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):			CASE NUMBER: <b>KC027484</b>

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

**1. TO THE CLERK:** Please dismiss this action as follows:

- a. (1) ☒ With prejudice      (2) ☐ Without prejudice
- b. (1) ☐ Complaint      (2) ☐ Petition  
 (3) ☐ Cross-complaint filed by (name):  
 (4) ☐ Cross-complaint filed by (name):  
 (5) ☒ Entire action of all parties and all causes of action  
 (6) ☐ Other (specify):\*

on (date):

on (date):

Date: MAY 10, 1999

**PATRICIA A. LAW**

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

**HOLSTEIN, TAYLOR, UNITT & LAW**

*Patricia A. Law*

(SIGNATURE)

Attorney or party without attorney for: **TOMMIE JEAN VAUGHN**

☒ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

**2. TO THE CLERK:** Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:

☐ Plaintiff/Petitioner      ☐ Defendant/Respondent  
☐ Cross-complainant

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): **JUN 24 1999**  
 4. ☐ Dismissal entered on (date): as to only (name):  
 5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to conform      ☐ means to return conformed copy

**A. MALDONADO**

Date: **JUN 24 1999**

Clerk, by \_\_\_\_\_, Deputy

Form Adopted by the  
 Judicial Council of California  
 982(a)(5) (Rev. January 1, 1997)

**REQUEST FOR DISMISSAL**

Code of Civil Procedure, § 581 et seq.  
 Cal. Rules of Court, rules 383, 1233

DEF 000803

SUPPLIER NO.		<b>WCI</b> SHARED SERVICES 11770 BEREA ROAD CLEVELAND, OH 44111		PAYEE NO.	CHECK NO.
1UWE5007				10194447	00014817
SUPPLIER NAME				DATE	PAGE
TOMMY JEAN VAUGHN AND THEIR ATTORNEYS				06/10/99	1 of 1
INV. NO.	DATE	COMPANY	GROSS	DISCOUNT	NET
KC027484/RM0571	061099	White Consolidated Ind., Inc	20,000.00		20,000.00
SETTLEMENT: VAUGHN, TOMMY JEAN V					
MONTGOMERY WARDS \$20,000.00					
RETURN CHECK TO LEGAL DEPT					
			20,000.00		20,000.00

To Remove Document Fold and Tear Along This Perforation

THIS MULTITONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM

**WCI**  
SHARED SERVICES

Mellon Bank N.A.  
Pittsburgh, PA 15259

00014817 60-14817-433

06/10/99

PAY TO THE ORDER OF **TOMMY JEAN VAUGHN AND THEIR ATTORNEYS**  
HOLSTEIN, TAYLOR, UNITT & LAW

\*\*\*\*\*\$20,000.00

Working Fund  
VOID AFTER 90 DAYS

*Handwritten Signature: Wade Van Allen*  
AUTHORIZED SIGNATURES

⑈0000014817⑈ ⑆043301601⑆ 000⑈2866⑈

## Matter Screen Report

Matter No: RM0571

Company

Status: Closed  
Org Level 1: FHP  
Org Level 2: Webster City, IA  
Matter Class: Litigation  
Access Group: Public  
File Number: 0019-00008970

### Budget Performance

Annual: Budget  
Life of Case: \$0  
\$35,000

### Court / Jurisdiction

Court: Superior  
Trial by: State  
Court Type: State  
Judge: CA  
State/Prov: County: Los An  
Country: CA

### Appeal

Appeal:  
Amount:  
Court:

CLOSING LITIGATION STATUS REPORT

CAPTION: VAUGHN, TOMMY JEAN  
V MONTGOMERY WARD & CO.  
NUMBER: RM0571

05356/0

*Inter  
filing at  
MCC*

LOCATION CODE: LAUNDRY/WEBSTER CITY, IA

DATE: 10/05/99

TYPE OF CASE: PL-PI

ASSIGNED TO: HEB

DATE COMPLAINT FILED: 0/00/00

DATE OF LOSS: 7/26/97

PLACE: LOS ANGELES, CA

DOCKET #: KC027484

COURT: SUPERIOR

CLAS FILE #: EQUINOX

10000.81700

AMOUNT OF SUIT: \$0

PRODUCT: WASHER

RESERVE AMOUNT:

MODEL #:

EXPENSE RESERVE:

**Redacted**

SERIAL #:

TOTAL EXPENSES:

**Redacted**

WCI COUNSEL : PRINDLE, DECKER & AMARO (LONG BEACH)

MICHAEL L. AMARO

310 GOLDEN SHORE

4TH FLOOR

LONG BEACH, CA 90802-4246

TELEPHONE: (562) 436-3946

PLAINTIFF'S COUNSEL:

FACTS\RESULT

PLAINTIFF SUFFERED A WRIST FRACTURE AFTER REACHING INTO A SPINNING WASHER.  
SETTLED, \$20,000.00, 6/10/99.

CC:

**FULL RELEASE OF ALL CLAIMS**

FOR AND IN CONSIDERATION of the sum of **TWENTY FOUR THOUSAND DOLLARS AND NO/100 (\$24,000.00)** to me in hand paid, receipt whereof is hereby acknowledged, I do for myself, my heirs, executors, administrators and assigns, fully and forever release and discharge **WHITE CONSOLIDATED INDUSTRIES, INC. and MONTGOMERY WARD**, and its officers, directors and shareholders, and all other persons, firms, associations and corporations, and each of them, of and from any and all claims, demands, actions or causes of actions which I may or might have against them, or any of them, by reason of any damages or injuries whatsoever sustained by me and occasioned directly or indirectly by an accident occurring on or about the **26TH day of JULY, 1997, at or near 1621 Howellhurst, West Covina, California 91790.**

This is intended as a full and complete release of all or any claims that I may or might have by reason of the happening of the said accident, and in accepting said sum I do so in full settlement of any and all such claims, and intend to and do hereby release all of said persons, firms, associations and corporations of and from any and all liability of any nature whatsoever for all damage or injury to my person and property (specifically including all expenses to which I may have been put, and also including all consequential damage to me on account of injuries to others), as well for all consequences, effects and results of any such injury or damage, whether the same are now known or unknown to me, expected or unexpected by me, or have already appeared or developed or may now be latent or may in the future appear to develop, and all rights under Section 1542 of the Civil Code are hereby expressly waived.\*

It is understood that this settlement is not an admission of any liability but is in compromise of a disputed claim and for said consideration I hereby assume the risk of any damages, injuries, or disability which may now be latent or unexpected or which may hereafter appear, develop or occur as the result of said accident, and I will hold said persons, firms, associations and corporations harmless from any and all claims therefor.

In the event there is any action to recover damages pending, I direct that the same be dismissed forthwith.

I agree that this settlement and release shall not destroy or otherwise affect the rights of persons on whose behalf this payment is made, nor shall the dismissal of any action filed by me constitute a retraxit or estop persons who may claim to be damaged by reason of the accident, to pursue any legal remedies they may have against the undersigned or any other persons.

**I HEREBY CERTIFY THAT I HAVE READ ALL OF THIS RELEASE AND CODE SECTION AND FULLY UNDERSTAND ALL OF THE SAME, AND IN WITNESS**

**WHEREOF I HAVE EXECUTED THIS RELEASE THIS 12 DAY OF MAY, 1999, AT West Covina, CALIFORNIA.**

  
TOMMIE JEAN VAUGHN

**\*CIVIL CODE 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

MLA/VAUGHN/RELEASE

DEF 000807

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Michael L. Amaro, Esq. - Bar No. 109514 Prindle, Decker & Amaro 310 Golden Shore, Fourth Floor Long Beach, CA 90802-4246 TELEPHONE NO.: (562) 436-3946		FOR COURT USE ONLY  <b>ORIGINAL FILED</b>  <b>JUN 24 1999</b>  <b>LOS ANGELES SUPERIOR COURT</b>
ATTORNEY FOR (Name): Defendant, MONTGOMERY WARD Insert name of court and name of judicial district and branch court, if any: LOS ANGELES SUPERIOR COURT EAST DISTRICT		
PLAINTIFF/PETITIONER: TOMMIE JEAN VAUGHN vs. MONTGOM DEFENDANT/RESPONDENT: MONTGOMERY WARD & CO., INC., e		
REQUEST FOR DISMISSAL <input checked="" type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):		CASE NUMBER: KC027484

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition  
 (3) ☐ Cross-complaint filed by (name):  
 (4) ☐ Cross-complaint filed by (name):  
 (5) ☒ Entire action of all parties and all causes of action  
 (6) ☐ Other (specify):\*

on (date):  
on (date):

Date: MAY 10, 1999

PATRICIA A. LAW

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

HOLSTEIN, TAYLOR, KUNITZ & LAW

*Patricia A. Law*

(SIGNATURE)

Attorney or party without attorney for: TOMMIE JEAN VAUGHN

☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(g) or (h).

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-complainant

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): JUN 24 1999  
 as to only (name):  
 4. ☐ Dismissal entered on (date):  
 5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):  
 b. Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to conform ☐ means to return conformed copy

J. MALDONADO

Date: JUN 24 1999

Clerk, by \_\_\_\_\_, Deputy

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.  
 Cal. Rules of Court, rules 363, 1233

Form Adopted by the  
 Judicial Council of California  
 992(a)(5) [Rev. January 1, 1997]

DEF 000808



SUPPLIER NO.		<b>WCI</b> SHARED SERVICES 11770 BEREA ROAD CLEVELAND, OH 44111		PAYEE NO.	CHECK NO.
1UWE5007				10194447	00014817
SUPPLIER NAME				DATE	PAGE
TOMMY JEAN VAUGHN AND THEIR ATTORNEYS				06/10/99	1 of 1
INV. NO.	DATE	COMPANY	GROSS	DISCOUNT	NET
KC027484/RM0571	061099	White Consolidated Ind., Inc	20,000.00		20,000.00
SETTLEMENT: VAUGHN, TOMMY JEAN V					
MONTGOMERY WARDS \$20,000.00					
RETURN CHECK TO LEGAL DEPT					
			20,000.00		20,000.00

To Remove Document Fold and Tear Along This Perforation

THIS MULTITONE AREA OF THE DOCUMENT CHANGES COLOR GRABUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

**WCI** SHARED SERVICES

Mellott Bank, N.A.  
11770 BerEA Road  
Cleveland, OH 44111

00014817 50-160  
433

06/10/99

\*\*\*\*\*\$20,000.00\*\*\*\*\*

PAY TO THE ORDER OF **TOMMY JEAN VAUGHN AND THEIR ATTORNEYS**  
HOLSTEIN, TAYLOR, UNITT & LAW

Working Fund  
VOID AFTER 90 DAYS

*Handwritten Signature*  
AUTHORIZED SIGNATURES

⑈0000014817⑈ ⑆043301601⑆ 000⑈2866⑈

## Closing Litigation Status Report

*Getz-Richeson, Diane*

**RM0588**

**Claim Number:** 04763/0

**Division / Location:** FHP / Webster City, IA

**Assigned to:** HEB

**Date Closed:** 03/31/00

**Date of Loss:** 12/01/97

**Date Complaint Filed:** 03/30/98

**Docket Number:** 719326

**Court:** Superior

**Amount of Suit:**

**Place:** CA

**Reserve Amount:**

Equinox / 10000.817003

**Total Budget:**

**Product Information:**

**Total Expenses:**

**Product:** Washer

**Model #:** MWX233RB

**Serial #:** XC60134540

Redacted

**WCI Counsel:**

**Opposing Counsel:**

Prindle, Decker & Amaro

310 Golden Shore

4th Floor

Long Beach CA 90802-4246

562-436-3946

**MCC RECORDS MANAGEMENT**

Co: 19 Box# 8770

CTRL# 96185 Loc: 24-2-10

**Facts / Result**

Plaintiff stuck her arm into a spinning washing machine and sustained personal injuries (broken elbow, wrist, thumb).

10/22/1999

Verdict \$150,000; Negotiating and setting up appeal. Mediation end of October 1999.

11/02/1999

Settled, \$140,000.00, 10/29/99.

Check #18981, 11/2/99; Chapin, Fleming, McNitt, Shea & Carter as attorney for Diane Getz-Richeson.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
CATHY MONTELL as the Mother and Natural  
Guardian of CHRISTOPHER MONTELL, an infant under  
fourteen (14) years of age, and CATHY MONTELL,  
individually,

Index No.:

**VERIFIED COMPLAINT**

Plaintiffs,

~~-against-~~

ELECTROLUX HOME PRODUCTS,

Defendant.  
-----X

Plaintiffs, by their attorneys, **DELL & LITTLE, LLP**, complaining of the Defendant,  
respectfully alleges, upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION  
ON BEHALF OF CHRISTOPHER MONTELL**

1. At all times herein mentioned, Plaintiffs were and still are residents of the County of Nassau, State of New York.
2. That at all times herein mentioned, Defendant **ELECTROLUX HOME PRODUCTS** was and still is a foreign corporation, duly authorized to do business in the State of New York.
3. That Defendant, **ELECTROLUX HOME PRODUCTS**, committed a tortious act within the State of New York.
4. That Defendant, **ELECTROLUX HOME PRODUCTS**, regularly does, or solicits, business in the State of New York.

Redacted

Redacted

5. That Defendant **ELECTROLUX HOME PRODUCTS** received substantial revenue from goods used or consumed, or services rendered, in the State of New York.

6. That at all times herein mentioned the Defendant **ELECTROLUX HOME PRODUCTS** was in the business of selling, manufacturing and distributing washing machines for the purpose of sale and use to the general public.

7. That at all times herein mentioned the Defendant **ELECTROLUX HOME PRODUCTS**, was in the business of selling, manufacturing and distributing washing machines for the purpose of sale and use to businesses.

8. That the Defendant, **ELECTROLUX HOME PRODUCTS** manufactured, produced and distributed a certain "Frigidaire Washing Machine" model number FWX445LB.

9. That at all times herein mentioned, and prior to November 26, 1998, the Defendant, **ELECTROLUX HOME PRODUCTS**, manufactured, sold, distributed and delivered to various retailers the above mentioned product.

10. That on November 26, 1998, Plaintiff **CHRISTOPHER MONTELL** used said product of Defendant, **ELECTROLUX HOME PRODUCTS**.

11. That the Defendant **ELECTROLUX HOME PRODUCTS** warranted said product was fit for the purpose for which it was intended.

12. That the Defendant **ELECTROLUX HOME PRODUCTS** warranted that said product was safe to use in every respect, and had been manufactured safely and warranted that it was good, safe and proper to use.

13. That the Defendant, **ELECTROLUX HOME PRODUCTS** impliedly warranted that the said product was of merchantable quality and was safe for use.

14. That relying upon said warranties, Plaintiff proceeded to use the said product in accordance with its intended use.

15. That Defendant, **ELECTROLUX HOME PRODUCTS** warranted and labeled its product and provided certain written instructions on said label in connection with the use of the product.

16. That on November 26, 1998 the Plaintiff while using the product in accordance with its intended use and pursuant to the written instructions set forth on the aforesaid label, was caused to suffer and sustain severe bodily injuries.

17. That the aforesaid accident was caused solely and wholly by reason that Defendant, **ELECTROLUX HOME PRODUCTS** breached its warranty or product merchantability and fitness for the intended use of the said product which warranties were both express and implied.

18. That as a result of the foregoing, Plaintiff was caused to sustain serious injuries and to have suffered pain, shock, mental anguish; that these injuries and their effects will be permanent; as a result of said injuries Plaintiff was caused, and will continue to be caused, to incur expenses for medical care and attention; and Plaintiff was, and will continue to be, rendered unable to perform Plaintiff's normal activities and duties and has sustained a resultant loss therefrom.

19. That this action falls under one or more of the exceptions of CPLR § 1602.

20. That as a result of the foregoing, Plaintiff was damaged in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS.

Redacted

**AS AND FOR A SECOND CAUSE OF ACTION  
ON BEHALF OF CHRISTOPHER MONTELL**

21. Plaintiff **CHRISTOPHER MONTELL**, repeats, reiterates and realleges each and every allegation contained in the First Cause of Action, together with the same force and effect as though same were more fully set forth at length herein.

22. That the said product was defective and that said defect was a substantial factor in causing the injury to the Plaintiff.

23. That on November 26, 1998, Plaintiff **CHRISTOPHER MONTELL**, used the product for the purpose and use normally intended.

24. That on November 26, 1998, while Plaintiff **CHRISTOPHER MONTELL** was using the said product, the washing machine pulled plaintiff's hand into the machine causing Plaintiff to suffer severe bodily injuries.

25. That by reason of the foregoing, the Defendant, **ELECTROLUX HOME PRODUCTS**, its servants, agents, licensees and/or employees are liable to Plaintiff for strict liability and tort, and/or strict products liability.

26. That by reason of the foregoing, Plaintiff **CHRISTOPHER MONTELL**, has been damaged in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS.

**AS AND FOR A THIRD CAUSE OF ACTION  
ON BEHALF OF CHRISTOPHER MONTELL**

27. Plaintiff **CHRISTOPHER MONTELL**, repeats, reiterates and realleges each and every allegation contained in the First and Second Causes of Action herein, together with the same force and effect, as though same more fully set forth at length herein.

Redacted

Redacted

28. That Plaintiff **CHRISTOPHER MONTELL** was caused to sustain those bodily injuries through no fault or carelessness of her own, but due wholly and solely to the acts and/or omissions which constituted the negligence of the Defendant, **ELECTROLUX HOME PRODUCTS**, its agents, servants, licensees and/or employees in improperly and negligently manufacturing and producing said product for use by the general public; and in otherwise being careless and negligent.

29. That by reason of the foregoing, Plaintiff **CHRISTOPHER MONTELL**, has been damaged in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

**AS AND FOR A FOURTH CAUSE OF ACTION  
ON BEHALF OF CATHY MONTELL**

30. Plaintiff **CATHY MONTELL** repeats, reiterates and realleges each and every allegation contained in the First Cause of Action with the same force and effect as though same more fully set forth at length herein.

31. That at all times hereinafter mentioned, Plaintiff **CATHY MONTELL** was the mother of the Plaintiff **CHRISTOPHER MONTELL** and as such was entitled to the society and services of her son, **CHRISTOPHER MONTELL**.

32. That by reason of the foregoing, Plaintiff **CATHY MONTELL** was deprived of the society and services of the Plaintiff **CHRISTOPHER MONTELL**.

33. That by reason of the foregoing, Plaintiff **CATHY MONTELL** was damaged in an amount not to exceed the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

**WHEREFORE**, Plaintiffs pray for a judgment against the Defendant herein in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS, on the First Cause of Action; in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS on the Second Cause of Action; in the sum of ONE MILLION (\$1,000,000.00) DOLLARS on the Third Cause of Action, and in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS on the Fourth Cause of Action together with the costs and disbursements of this action.

Yours, etc.

DELL & LITTLE, LLP  
Attorneys for Plaintiff(s)  
350 OLD COUNTRY ROAD, Suite 105  
Garden City, NY 11530  
(516) 294-5814

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NASSAU     )

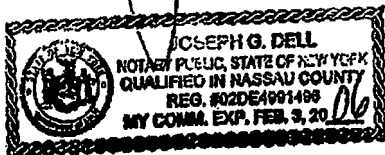
CATHY MONTELL, being duly sworn says:

1. I am one of the Plaintiffs above named.
2. I have read the foregoing **SUMMONS & COMPLAINT** and know its contents; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

*Cathy A Montell*  
CATHY MONTELL

Sworn hereto before me this  
6 day of May, 2003

Notary Public



DANIEL S. BURDETT, P.E., P.C.  
200 WEST 72ND STREET  
NEW YORK, NEW YORK 10023  
(212) 799-5716

To: Dell & Little, LLP  
350 Old Country Road  
Suite 105  
Garden City, NY 11530

From: Daniel S. Burdett  
Professional Engineer

Date: 4/20/04



Subject: Accident that occurred to infant Christopher Montell  
on 11/16/98 at approximately 1:50 p.m.

-----  
At your request, on 5/18/99 the accident washing machine  
was inspected. Photographs were taken. Ms. Cathy Montell was  
present.

The following is noteworthy:

A - GENERAL INFORMATION

1. The following was reviewed:
  - a) The deposition of the defendant dated 3/8/04.
  - b) The deposition of the plaintiffs -- Christopher and Cathy Montell dated 3/8/04.
  - c) Response to Defendant's First Set of Interrogatories, dated 3/8/04.
  - d) Owner and installation manual.
  - e) Purchase and delivery order.
  - f) Photographs of Christopher's injuries and photographs of the machine.
  - g) Electrical schematic of the washer.
2. The accident site is the lower floor of a residential house located at 6 Murray Street, Bayville, New York 11709.
3. Observations and measurements of the subject washing machine indicated:
  - a)(1) The machine is approximately 36" high by 27" wide by 20" deep (front to back).



DANIEL S. BURDETT, P.E., P.C.  
200 WEST 72ND STREET  
NEW YORK, NEW YORK 10023  
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Page 2

- 2) The spindle or agitator is approximately 18" high.
- b) The label reads "Frigidaire, (2) Speed (10) Cycles". The serial # is XC4279883. The model number is FWX445LRSWH.
- c) The machine was not operated during the inspection. The machine was used after the subject accident up until 5/10/99, when there was smoke coming from the washer and it was not used since that time.
4. The washing machine is located next to a dryer.
5. The Owner's Guide describes the loading technique and various do's and don'ts.
- a) In particular, page 8: (enclosed)

#9 - "Start the washer. Close the washer lid and start the washer. The washer will agitate with the lid open; however, the tub will not spin unless the lid is closed".

#10 - "Remove items when the cycle is completed. As a safety measure, the lid automatically locks during the spin cycle. The safety lid unlocks approximately (1) minute after the end of the spin cycle. To open the lid during spin, stop the washer and wait approximately (1) minute for the safety lid lock to release".

6. Inside the top cover, item #4 reads:

"Close lid. Washer fills and agitates with lid open, but does not advance into the spin cycle unless the lid is closed. As a safety measure, the lid automatically locks during the spin portion of each cycle. Lid automatically unlocks approx. (1) minute after end of spin".

Redacted

- ANALYSIS

1. Infant Christopher opened the lid during the spin cycle to add a shirt to the wash load. His mother, Cathy, thought the washer was still in the wash agitation cycle. Instantly, the shirt wrapped around Christopher's hand causing his right thumb to be partially amputated.

2. Ms. Montell never tried to open the lid during the spin cycle before or after the accident.

3. The most dangerous point of the washing cycle - the spin cycle, was compromised because the top lid was allowed to be opened. The locking mechanism failed. The failure whether

Redacted

DANIEL S. BURDETT, P.E., P.C.  
200 WEST 72ND STREET  
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(212) 799-5716

Page 3

electrical or mechanical is irrelevant. The lock mechanism did not "fail safety" - a key basic requirement in fail safe design and operation. That is, if a critical safety component fails, it must fail safety such that, in this case, the lid could not open during the spin period! An example of the fail safety requirement is when a traffic light fails, the traffic light goes into a red blinking mode - it fails safely.

Ms. Montell never experienced the problem of the lid opening during the spin cycle, she had never tried it. Whether the locking lid mechanism (interlock) ever worked is unknown - no advance notice of the lid function is required since if it fails, the lid must remain locked and opened only with the manufacturer's supplied instructions (written on the washer).

#### C - CONCLUSIONS

It is my Professional Engineering Opinion that the accident washing machine was unsafe, hazardous and deficient in its design, manufacturing, and quality control/inspection procedures. The major safety device - the interlock mechanism to keep the top lid closed during the spin cycle, malfunctioned or never functioned.

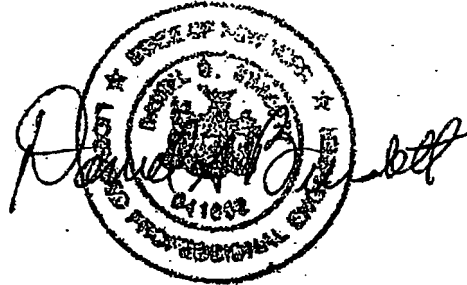
The manufacturers quality control/inspection procedures of the lid mechanism are not known. Every lid locking system should be tested. The lid/lock inspection and testing procedures by the manufacturer is unknown and was not provided. Every washing machine that goes out the door must be checked for this critical safety feature.

DANIEL S. BURDETT, P.E., P.C.  
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(212) 799-5716

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Professional Engineer

Date: 4/20/04



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Page 2

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NEW YORK, NEW YORK 10023  
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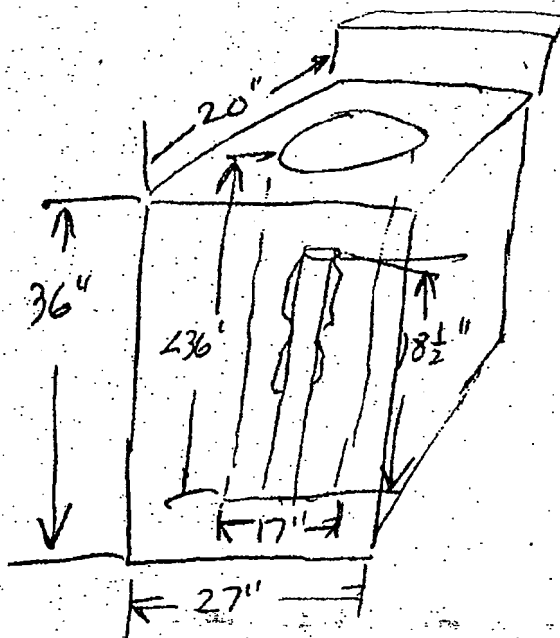
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The manufacturers quality control/inspection procedures of the lid mechanism are not known. Every lid locking system should be tested. The lid/lock inspection and testing procedures by the manufacturer is unknown and was not provided. Every washing machine that goes out the door must be checked for this critical safety feature.

3/99



① D/A

11/25/98 ~ 1:50 pm  
(Used until fire)

② D/Fire/Smog

5/10/99 - not used  
(Smoke in washer) sinceRec'd as gift - 12/5/95  
hooked up ~ 12/12/95 by  
Perry. ex-Husband

① after spin - took 30/40 sec to come to stop - ?

② Serial # XC4279883P

yale.

- ① Load clothes - set for time - pull out knob
- ② Add detergent - water into washer
- ③ Rinse / spin - 3/4 minutes - ? - Soapy water
- ④ Dephosphorize - clear water  
spin - 3-4 minutes
- ⑤ Final spin - ← covered covered here

- ① Fill with water
- ② Dephosphorize
- ③ 1st spin
- ④ Refill and clear water
- ⑤ 2nd / Final spin
- ⑥ Dry wash in Dryer

Model #

① ✓ FWX445LBSWH

Serial #

② ✓ XC42798831

③ "Frigidaire"

④ Delivery → 2/9/95

DEFENDANT'S  
EXHIBIT  
1/2/99



## Investigation Report

Claimant: Cathy and Christopher Montell

Inspection Date: February 17, 2004

This report is based on my inspection of the washer at the Montell residence in Nassau County, New York.

The model number of the machine was FWX445LBS0, serial number is XC42798831. The machine was manufactured during the 6<sup>th</sup> month of 1994.

The washer was located in a corner of the garage. The lid was not on the washer at the time of my inspection. The hinge pins were broken from the lid and were not with the lid or washer. The lid striker was on the lid and was in good shape. The lid lock assembly was mounted on the top panel where it should be and outward signs showed it to be in good shape also.

I tried to operate the washer but I felt the motor or transmission bearing must have been ceased from lack of use and in a high moisture area for a long period of time. I did not try to force the machine to work. I did however use an ohm meter to test the circuits in the washing machine. The ohm meter testing told me that the lid lock worked properly. With the lid open there was no continuity in the lid lock so the machine would not go into spin. Putting the lid on the machine and using the ohm meter, then there was continuity and the machine would have gone into spin. There was a report of a fire in the machine sometime after the accident. I could not see any signs of a fire. Some times a belt will smoke a little causing a smell of fire. Examining the washer reviled that the machine was in fairly good shape for a machine that is ten years old and was subject to outside weather conditions.

The machine as designed will not spin with the lid open. With my knowledge and experience of the wiring schematic, lid lock, machine testing and machine operation, I can say that the machine would not have spun with the lid open if it had been operable when I examined it. If the lid was attached properly at the time of the accident, it is my opinion that this accident to infant plaintiff could not and did not happen as has been alleged.

Respectively submitted,

*Fred J. Pauk* 6/22/04

Fred J. Pauk

Manager Product Safety and Compliance  
Electrolux Home Products

### ELECTROLUX HOME PRODUCTS NORTH AMERICA

#### MAILING ADDRESS

400 Des Moines Street  
Webster City, Iowa 50595  
USA

#### OFFICE ADDRESS

400 Des Moines Street  
Webster City, Iowa 50595  
USA

#### TELEPHONE

515 832 5334  
FAX  
515 832 6988

#### SITE

[www.frigidaire.com](http://www.frigidaire.com)  
[www.poulan.com](http://www.poulan.com)  
[www.weedeater.com](http://www.weedeater.com)

FRIGIDAIRE TAPPAN W. WEED EATERS



1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 CENTRAL ISLIP  
5 -----X

6 CATHY MONTELL, as the Mother and Natural  
7 Guardian of CHRISTOPHER MONTELL, an infant  
8 under fourteen (14) years of age, CATHY  
9 MONTELL, Individually,

10 Plaintiffs,

11 -against-

12 ELECTROLUX HOME PRODUCTS, INC.,

13 Defendant.  
14 -----X

15 March 8, 2004  
16 2:36 P.M.

17 350 Old Country Road  
18 Garden City, New York

19 EXAMINATION BEFORE TRIAL of  
20 the Defendant, ELECTROLUX HOME  
21 PRODUCTS, INC., by FRED PAUK.

22 TOMMER REPORTING, INC.  
23 192 Lexington Avenue  
24 Suite 802  
25 New York, New York 10016  
(212) 684-2448  
Ref: T10175C



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2

A P P E A R A N C E S:

3

4

DELL & LITTLE, LLP  
Attorneys for Plaintiffs  
350 Old Country Road, Suite 105  
Garden City, New York 11530

5

6

7

BY: JOSEPH G. DELL, ESQ.

8

9

BOEGGEMAN, GEORGE, HODGES & CORDE, P.C.  
Attorneys for Defendant  
ELECTROLUX HOME PRODUCTS, INC.  
11 Martine Avenue  
White Plains, New York 10606

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11

12

BY: PAUL E. SVENSSON, ESQ.

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TOMMER REPORTING, INC. (212) 684-2448

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND  
AGREED by and between the attorneys for the  
respective parties herein, that the filing  
and sealing be and the same are hereby  
waived.

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as to the  
form of the question, shall be reserved to  
the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may be  
sworn to and signed before any officer  
authorized to administer an oath, with the  
same force and effect as if signed and sworn  
to before the Court.

\*\*

\*\*

\*\*

1

2

F R E D P A U K,

3

called as a witness, having been first

4

duly sworn, was examined and testified

5

as follows:

6

EXAMINATION BY

7

MR. DELL:

8

Q. State your name for the record,

9

please.

10

A. Fred Pauk.

11

Q. Your address, please?

12

A. 400 Des Moines Street, Webster

13

City, Iowa 50595-1407.

14

Q. How are you doing, sir?

15

A. I'm good, thank you.

16

Q. My name is Joe Dell. We met once

17

before this at the inspection of the washing

18

machine in Bayville some several weeks ago.

19

I'm going to ask you questions this afternoon

20

that have to do with this Frigidare washing

21

machine. If there's anything I ask you you

22

don't understand, let me know, I'll rephrase

23

the question.

24

If you want to take a break at any

25

time, let me know and we'll take a break. As

5

FRED PAUK

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a courtesy to the court reporter, everything I ask you will be verbal. You have to wait till I finish and then respond verbally, okay?

A. Okay.

Q. Are you currently employed?

A. Yes, sir.

Q. By whom?

A. By Electrolux Home Products.

Q. How long have you been employed by that employer?

A. Well, Electrolux bought Frigidare in 1987, I believe, and I had started with Frigidare in 1985.

Q. Prior to working for Frigidare in 1985 who did you work for?

A. I went to school for two years and before that I worked in a meat packing plant.

Q. The school you went to for two years, what was that in?

A. That was industrial electronics and electrical class.

Q. When you went to work for

1 FRED PAUK

2 Frigidare, what type of work did you do  
3 there?

4 A. I started in the test and  
5 evaluation lab.

6 Q. The test and evaluation lab is  
7 that where they test finished products,  
8 component parts or something else?

9 A. Those days we did all of it  
10 there. So a component or a finished product,  
11 yes.

12 Q. Would the products, would the  
13 components be tested to failure or some other  
14 method?

15 A. Some were tested to failure,  
16 some were tested to what they call life, so  
17 many cycles.

18 Q. In your current employment with  
19 Electrolux Home Products, do you work in a  
20 particular division?

21 A. I just work in the laundry  
22 division, yes.

23 Q. The Frigidare model washer  
24 that's involved in Christopher Montell's  
25 case, are you familiar with that washer?

1 FRED PAUK

2 A. Yes, I am.

3 Q. Do you know when Frigidare first  
4 came out with the model washer that's  
5 involved in this case?

6 A. Not right off the top of my  
7 head, no.

8 Q. The one that's involved in  
9 Christopher Montell's incident, do you know  
10 when that was manufactured?

11 A. That was what I thought you just  
12 asked me.

13 Q. Oh, okay.

14 A. I probably could find those  
15 records, but I don't know exactly when it  
16 started.

17 Q. The previous question was do you  
18 know when that model came out. Do you know  
19 if it came out in the '70s, '80s, '90s?

20 A. You're talking about that  
21 design?

22 Q. Yes, that design, sure.

23 A. I'm sorry, that design came out  
24 in 1989.

25 Q. That washer has a lid lock?

1 FRED PAUK

2 A. That's true.

3 Q. Who manufactures the lid lock?

4 A. US Controls.

5 Q. Who is US Controls?

6 A. They're a supplier of ours that  
7 I don't know what all they supply, but  
8 they're electrical type supplier.

9 Q. They're an electrical component  
10 parts supplier to Frigidare?

11 A. That's correct.

12 Q. Do you know when lid locks were  
13 first utilized by Frigidare on their washing  
14 machines?

15 A. I've not been able to pin it  
16 down exactly, but it was in the mid, mid '70s  
17 some place.

18 Q. Does Frigidare still make the  
19 model washing machine involved in Christopher  
20 Montell's accident?

21 A. Model number, no.

22 Q. Same design?

23 A. Same design, yes.

24 Q. Same type of lid lock?

25 A. Yes.

1 FRED PAUK

2 Q. Do you know where US Controls is  
3 located?

4 A. I want to say Berlin, Wisconsin,  
5 but I'm not sure, and I think they've changed  
6 names since then or been bought out by  
7 somebody, but I really don't know.

8 Q. If we left a space in the  
9 transcript, would you back at your office  
10 have the information available to write in  
11 the information on US Controls?

12 A. Yes.

13 Q. Okay, we would just ask that you  
14 do that with your attorney's direction.

15 A. Um-hmm.

16 \*

---

17 Q. The model that was involved in  
18 Christopher's Montell's incident, do you know  
19 if there were any alternative lid locks for  
20 that model?

21 A. No.

22 Q. Do you have an understanding of  
23 how that lid lock works?

24 A. Yes, I do.

25 Q. Can you tell me what is that?



10

1 FRED PAUK

2 A. The lid lock senses, well, first  
3 it's an on/off switch and it senses when it's  
4 closed. Then, the current flows through a  
5 bimetal piece which curves and sends over the  
6 locking device that goes into the striker,  
7 and then the current continues onto the motor  
8 once the motor stops or you shut the machine  
9 off or it ends the cycle, then it cools back  
10 off and the bimetal cools off and then locks.

11 Q. Approximately how long does it  
12 take after the cycle ends to cool off?

13 A. Around about a minute. Some  
14 longer, some shorter, and it depends on the  
15 ambient air temperature around and things  
16 like that.

17 Q. At the moment the cycle's off  
18 the agitator still spins?

19 A. Yes, the agitator will be  
20 spinning.

21 Q. Is it spinning based on its own  
22 centrifugal force or is it spinning because  
23 it has electrical current or something else?

24 A. No, once the electricity stops  
25 its spinning just for centrifugal force.

1 FRED PAUK

2 Q. Prior to inspecting the washing  
3 machine did anyone advise you as to how  
4 Christopher Montell claims his accident  
5 occurred?

6 A. No, not really. I just got a  
7 claim that there was a claim out here in New  
8 York to come and inspect the washing machine.

9 Q. Do you have a current  
10 understanding of how that accident is alleged  
11 to have occurred?

12 A. From listening today.

13 Q. From having listened do you have  
14 an understanding as to how that could happen?

15 MR. SVENSSON: That requires an  
16 expert opinion perhaps.

17 MR. DELL: He's not being  
18 produced as an expert I take it, just  
19 a fact witness?

20 MR. SVENSSON: Well, we'll go  
21 off the record for a second.

22 (Whereupon, an informal  
23 discussion was held off the record)

24 BY MR. DELL:

25 Q. You have a file in front of you

1 FRED PAUK

2 today?

3 A. Yes, I do.

4 Q. Is that a file you prepared with  
5 regard to the Montell case?

6 A. Yes, it is.

7 MR. DELL: Why don't we have it  
8 marked. We'll mark the file as  
9 Plaintiffs' 1.

10 (Whereupon, the Electrolux Home  
11 Products file was received and marked  
12 as Plaintiffs' Exhibit 1 for  
13 identification, as of this date.)

14 Q. Just so the record's clear,  
15 we've marked the file that you prepared with  
16 regard to the Montell case as Plaintiffs'  
17 Exhibit 1 for identification. Your attorney  
18 will take a look at it so there's nothing  
19 privileged in it.

20 MR. DELL: And just so the  
21 record's clear, this witness is being  
22 produced as a fact witness pertaining  
23 to this case, not an expert witness.

24 Q. Do you have an understanding as  
25 to whether or not it's possible to open the

1 FRED PAUK

2 lid while the spin cycle is still engaged?

3 A. No, it's not.

4 Q. Does the model involved in this  
5 case have any warning on it, on the machine  
6 itself that would alert the user that you  
7 shouldn't open the lid when it's in a spin  
8 cycle?

9 A. You can't open the lid when it's  
10 in spin cycle.

11 Q. Are there any warnings on the  
12 machine itself with regard to its use or  
13 operation?

14 A. Yes, inside the lid.

15 Q. Are there any on the outside of  
16 the lid?

17 A. There are probably some on the  
18 back, some warnings on the back of the  
19 console.

20 Q. Back of the machine itself?

21 A. That's right.

22 Q. That portion of the machine  
23 would be facing the wall generally?

24 A. That's correct.

25 Q. Does the machine, the one

1 FRED PAUK

2 involved in this case, operate with the lid  
3 open?

4 A. It will agitate with the lid  
5 open, but will not spin.

6 Q. The agitator, when the agitator  
7 is engaged, does it make three hundred degree  
8 spins, does it do something else?

9 A. No, it oscillates. It goes back  
10 and forth.

11 Q. Does not make full rotations?

12 A. That's correct.

13 Q. And it will do that with the lid  
14 open?

15 A. That's correct.

16 Q. At that moment those warnings  
17 are visible?

18 A. With the lid open, yes.

19 Q. The control to turn on and off  
20 the washing machine, where are they located?

21 A. On the back, along the back of  
22 the machine.

23 Q. If the lid's open, can you reach  
24 those?

25 A. You can kind of reach around

1 FRED PAUK

2 them, but yes. I mean, no, they're not. The  
3 lid covers them basically.

4 Q. Other than those controls are  
5 there any other controls like a kill switch  
6 that are within reaching distance with the  
7 lid up?

8 A. No.

9 Q. Does the agitator or the basket  
10 have any type of brake?

11 A. No, it does not.

12 Q. How is it that the agitator or  
13 basket stops spinning after a spin cycle?

14 A. It just comes to a rest.

15 Q. Just naturally winds down?

16 A. That's correct.

17 Q. Were you ever present when  
18 Frigidare tested the lid lock?

19 A. I tested the first lid locks.

20 Q. These particular lid locks?

21 A. Yes.

22 Q. You tested them at Frigidare?

23 A. That's correct.

24 Q. Were they tested for life,  
25 number of cycles or were they tested to

16

1 FRED PAUK

2 failure?

3 A. All three.

4 Q. So, life, cycles and failure?

5 A. That's correct.

6 Q. Did Electrolux keep records at  
7 the time of those tests?

8 A. Yeah, at the time they did.

9 Q. Do you still have them?

10 A. No, I'm sorry, they're long  
11 gone. That was '87, so they'd be long gone.  
12 Actually I correct that, it was '86.

13 Q. Does Frigidare or Electrolux  
14 currently have any of the test results of the  
15 lid lock, the one involved in this case?

16 A. No.

17 Q. Those have all been discarded?

18 A. Yes.

19 Q. Have you ever testified for  
20 Electrolux or Frigidare before?

21 A. Yes, I have.

22 Q. How many times?

23 A. Five.

24 Q. Did they involve the same  
25 washing machine that's involved in this case

1 FRED PAUK

2 or different ones?

3 A. Not the same washing machine,  
4 not always washing machines.

5 Q. How many of them were washing  
6 machines?

7 A. Well, let me think here.  
8 Actually, I don't believe I've been to court  
9 with a washing machine before.

10 Q. Have you ever been to a  
11 deposition like we're doing right now?

12 A. Yes.

13 Q. How many times?

14 A. Two I think.

15 Q. Either one involve washing  
16 machines?

17 A. Yes, both of them.

18 Q. Either one involve this type of  
19 washing machine?

20 A. This model, no.

21 Q. Either one of them involve lid  
22 locks?

23 A. Yes.

24 Q. We'll just leave a space in the  
25 transcript.



1 FRED PAUK

2 MR. DELL: We just call for the  
3 caption and index or docket number of  
4 those cases and the copy of the  
5 transcript.

6 MR. SVENSSON: That request you  
7 should put in writing.

8 MR. DELL: We will.

9 \*

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10 A. Wait a minute. We're talking  
11 about depositions, right?

12 Q. Just depositions, yes.

13 A. 'Cause I don't think I've ever  
14 been to trial. I might be wrong. I might  
15 only have one.

16 Q. That's okay.

17 Did you examine the washing machine  
18 that's involved in this case?

19 A. Yes, I did.

20 Q. Do you remember the date that  
21 you did that?

22 A. No, it was about two weeks ago.

23 Q. I was present?

24 A. That's correct.

25 Q. Your attorney was present?

1 FRED PAUK

2 A. That's correct.

3 Q. Christopher was there for a  
4 little bit of it?

5 A. Yeah, I seen him go  
6 skateboarding down the road.

7 Q. His brothers were there, some of  
8 them?

9 A. Yes.

10 Q. Did you take any notes when you  
11 did that inspection?

12 A. No, I didn't.

13 Q. Did you take photographs?

14 A. Yes.

15 Q. Do you have a copy of those  
16 photographs?

17 A. Not with me.

18 MR. DELL: We'll call for the  
19 production of photographs and  
20 follow-up in writing.

21 Q. Did you issue any written  
22 reports to anyone after it?

23 A. No, I have not.

24 Q. Did you make any verbal reports  
25 to anyone after it?

1 FRED PAUK

2 A. Just what Paul and I talked  
3 about on the way back here I guess.

4 MR. SVENSSON: For the record  
5 we'll note that it was February 17th,  
6 2004.

7 MR. DELL: I know it was cold  
8 'cause I was waiting for you guys out  
9 there. My feet were getting cold.

10 Q. There are particular warnings  
11 listed in the owner's guide on Pages 3 and 4;  
12 is that correct?

13 A. That's correct.

14 Q. Are those warnings listed on the  
15 machine itself?

16 A. No, they are not.

17 Q. The owner's guide, is that  
18 designed to be attached to the machine or  
19 kept separate from the machine?

20 A. I guess it's kept separate. I  
21 don't know what you mean by attached. Glued  
22 to the machine, no.

23 Q. Is there any plastic pouch  
24 either connected to the machine or tethered  
25 to it by the cord so the operator's guide or

1 FRED PAUK

2 manual can be left with the machine?

3 A. No.

4 MR. DELL: I'm done, that's it.

5 EXAMINATION BY

6 MR. SVENSSON:

7 Q. Mr. Pauk, I'm going to draw your  
8 attention to Plaintiffs' Exhibit 1, that was  
9 the packet of information that plaintiff's  
10 attorney marked earlier today. Included in  
11 Plaintiffs' Exhibit 1 are these materials  
12 that you took from the files?

13 A. Yes.

14 Q. The files that are maintained at  
15 Electrolux?

16 A. That's correct.

17 Q. Did you find an owner's guide in  
18 the files?

19 A. Yes, I do.

20 Q. Can you show us that owner's  
21 guide?

22 A. Yes (handing).

23 Q. I don't want to mark the one  
24 clean copy you have. I'll just show you  
25 what's been marked as Defendants' Exhibit D

1 FRED PAUK

2 and ask you if Defendants' Exhibit D is  
3 substantially identical to the owner's guide  
4 that you took out of the file? So, you have  
5 to go through them page by page.

6 A. Yes, it's the same.

7 Q. Okay, thank you. Now, how can  
8 you be sure that this owner's guide was  
9 prepared or issued for the washing machine in  
10 question here today?

11 A. Well, it has our pack number  
12 down on the bottom of it and it was  
13 manufactured or put together in the 12th  
14 month of 1993, and this machine, I believe,  
15 was built in 1994, and this is a Frigidare  
16 machine. Other than that it's the owner's  
17 guide that we send out with Frigidare's  
18 machines.

19 Q. Is it routine business practice  
20 for Frigidare to send out an owner's guide  
21 with all of its machines?

22 A. Yes.

23 Q. Did the owner's guide include  
24 operating instructions for the consumer?

25 A. Operating instructions come on a

1 FRED PAUK

2 different card, and they're also in this  
3 file. There are probably some operating  
4 instructions in there and there are some  
5 laundry tips, so on and so forth, but the  
6 pure operating instructions we put on a  
7 different sheet of paper.

8 Q. If I showed you Defendants'  
9 Exhibit D, would that be the operating  
10 instructions that you're referring to?

11 A. Yes, it is.

12 Q. Did the owner's guide include  
13 warnings for the consumer?

14 A. Yes, the owner's guide does,  
15 yes.

16 Q. Are those the warnings that  
17 plaintiff's attorney referred to earlier on  
18 Pages 3 and 4?

19 A. That's correct.

20 Q. I'm going to also show you  
21 what's been marked previously as Defendants'  
22 Exhibit A. Can you identify what that's a  
23 photograph of?

24 A. I believe it's the washing  
25 operating instructions that are painted in

1 FRED PAUK

2 the lid. I'll just check them against my  
3 print here. Yes, that's the same  
4 instructions.

5 Q. You're referring to Exhibit A  
6 being the instructions that are on the inside  
7 lid of the washing machine?

8 A. That's correct.

9 MR. SVENSSON: Okay, thank you.

10 (Time noted: 3:01 P.M.)

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A C K N O W L E D G E M E N T

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4

STATE OF NEW YORK )

5

COUNTY OF NEW YORK )

ss.:

6

7

I, FRED PAUK, hereby certify that I

8

have read the transcript of my testimony

9

taken under oath in my deposition of the 8th

10

day of March, 2004.

11

That the transcript is a true,

12

complete and correct record of what was

13

asked, answered and said during this

14

deposition, and that the answers on the

15

record as given by me are true and correct.

16

17

18

\_\_\_\_\_  
FRED PAUK

19

20

Signed and subscribed to

21

before me this day

22

of , 2004.

23

24

25

\_\_\_\_\_  
Notary Public



26

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EXHIBITS

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PLF'SDESCRIPTIONPAGE

9

1

Electrolux Home Products  
file regarding Christopher  
Montell

12

10

11

12

REQUESTS

13

PG-LN DESCRIPTION

14

9-16 Insert the information regarding  
where US Controls is located.

15

16

18- 9 Produce the caption or docket  
number of Electrolux washing machine  
cases involving lid locks and  
copies of the transcripts.

17

18

19-18 Produce a copy of the photographs  
taken by Mr. Pauk.

19

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C E R T I F I C A T E

3

4

I, REGINA TOPPINS, hereby

5

certify that the Examination of FRED PAUK was

6

held before me on March 8, 2004;

7

That said witness was duly sworn

8

before the commencement of the testimony;

9

That the within testimony was

10

stenographically recorded by myself, and is

11

an accurate record of the Examination of said

12

witness;

13

That the parties herein were

14

represented by counsel as stated herein;

15

That I am not related to any of

16

the parties, in the employ of any of the

17

counsel, nor interested in the outcome of

18

this matter.

19

IN WITNESS WHEREOF, I have

20


hereunto set my hand this 8th day of March,

21

2004.

22

23



24

REGINA TOPPINS

25